Supreme Court of the United States.

OCTOBER TERM, 1901.

Brf. of Matson for P. E.

No. 219.

Filed Mar. 10, 1902.

THE TRAVELERS INSURANCE COMPANY,

Plaintiff in Error,

vs.

THE STATE OF CONNECTICUT.

In Error to the Supreme Court of Errors of the State of Connecticut.

Brief for Plaintiff in Error.

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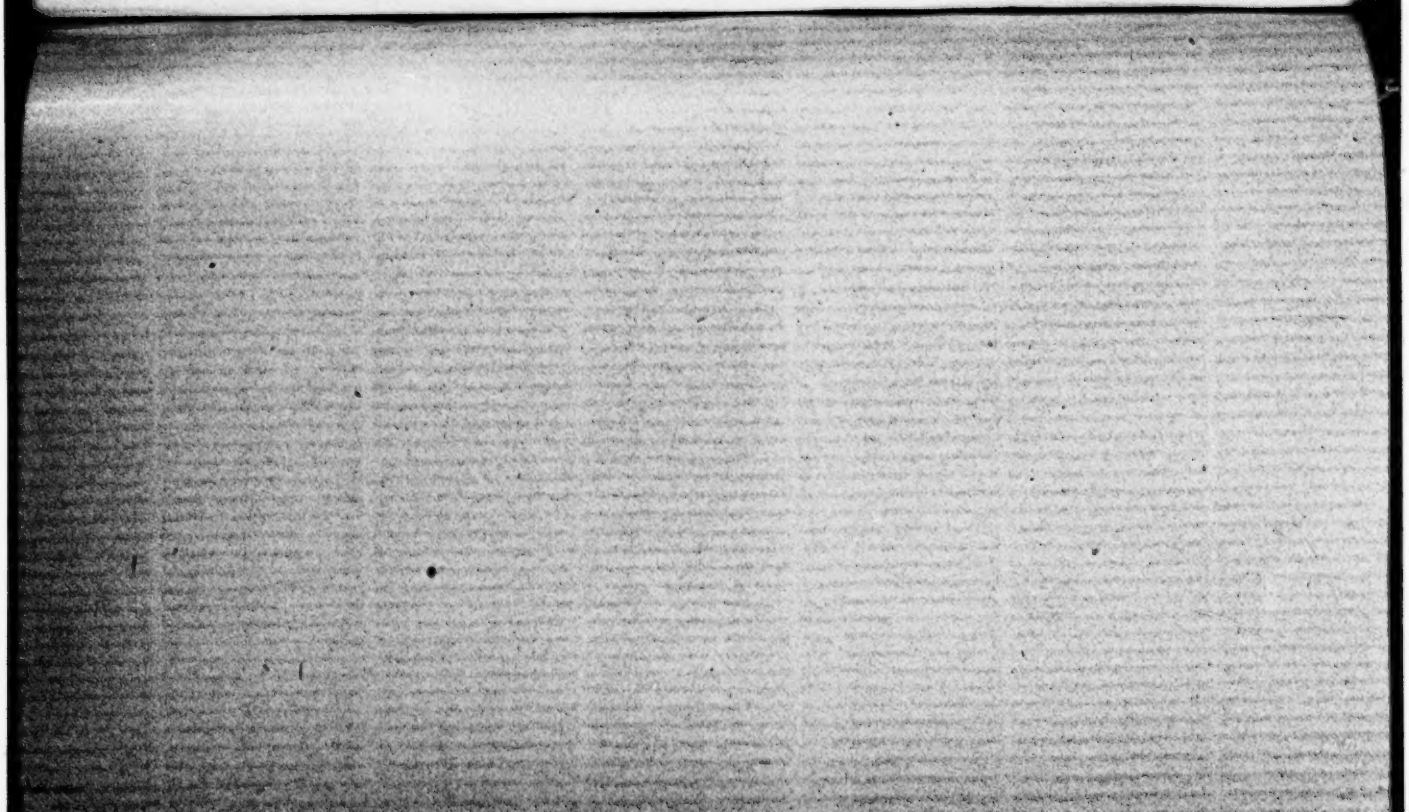

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STATEMENT.

This writ of error is brought to review a judgment of the Supreme Court of Errors of the State of Connecticut in an action by the State against The Travelers Insurance Company, a corporation chartered by the State and located in the town of Hartford, to recover taxes upon the shares of the capital stock of the corporation owned by residents of other states than Connecticut.

Under the statutes and law of Connecticut the tax in question is a tax upon the shares of stock as the property of

the stockholders, and is collected through the corporation, which has a lien for the payment upon the shares. The tax is in substance and effect a tax against the stockholders.

The shares of stock owned by residents of Connecticut are listed, assessed, and taxed in the towns where the stockholders respectively reside. The rate of tax is fixed by local authorities, and the assessment is made at the market value of the shares as of October 1st, less a deduction. This deduction is determined by the amount of real estate which the corporation owns and upon which the corporation is subject to taxation in Connecticut and elsewhere. The amount of this corporate real estate owned by The Travelers Insurance Company on October 1, 1898, was very large, and the deduction therefor to the resident stockholders resulted in an assessment of their shares at a figure far below their market value.

The shares of stock owned by residents of other states are assessed and taxed directly by the State. The rate of the tax is fixed by statute at 1½%, and the assessment is at the market value of the shares as of October 1st, without any deduction whatever. The deduction granted to stockholders resident in Connecticut on account of the corporate real estate is withheld from stockholders resident in other states.

By reason of this discrimination, the assessed value of the shares of the stock of The Travelers Insurance Company held by residents of other states on October 1, 1898, was far greater per share than the assessed value of the shares held by stockholders resident in Connecticut on said date, and the tax sought to be collected in the present action from stockholders resident in other states than Connecticut upon the

shares owned by them on October 1, 1898, is far greater per share than the tax levied and collected from stockholders resident in Connecticut upon the shares owned by them on the same date.

The stockholders upon whose shares taxes are sought to be collected in the present action are all citizens of the United States and citizens of other states than Connecticut.

The statute under which this tax is sought to be collected, to wit, Section 2 of Chapter CLIII of the Public Acts of 1897, reads as follows:

> "Sec. 2. Section 3916 of the General Statutes is hereby amended to read as follows: The cashier or secretary of each corporation whose stock is liable to taxation, and not otherwise taxed by the provisions of this title, shall, on the first day of October, annually, or within ten days thereafter, deliver to the comptroller a sworn list of all its stockholders residing without this State on said day, and the number and market value of the shares of stock therein then belonging to each; and shall on or before the twentieth day of October, annually, pay to the State one and one-half per centum of such value; and if any such cashier or secretary shall neglect to comply with the provisions of this section he shall forfeit to the State one hundred dollars, in addition to said one and one-half per centum so required to be paid."

The statute under which The Travelers Insurance Company has a lien for recovery of the tax paid by it upon the shares of nonresident stockholders, to wit, Chapter 50 of the Public Acts of 1899, reads as follows:

> "Section 1. Section 1923 of the General Statutes is hereby amended to read as follows: When not

otherwise provided in its charter, the stock of every corporation shall be personal property, and be transferred only on its books, in such form as the directors shall prescribe; and such corporation shall at all times have a lien upon all the stock owned by any person therein, for all debts due to it from him; and any corporation desiring to enforce such lien may give notice to such stockholder, his executor or administrator, and if there be none, his heir-at-law, that unless he shall pay his indebtedness to said corporation within three months it will sell said stock; and such corporation may prescribe by its by-laws the manner of giving notice required by this section, but the notice of sale shall in no case be given until the liability has become fixed."

The statute under which the shares of resident stockholders are assessed and taxed, to wit, Section 3836 of the General Statutes, reads as follows:

"Section 3836. Shares of the capital stock of any bank, national banking association, trust, insurance, investment, turnpike, bridge, or plank road company, owned by any resident in this State, shall be set in his list, at its market value in the town in which he may reside; but so much of the capital of any such company as may be invested in real estate, on which it is assessed and pays a tax, shall be deducted from the market value of its stock, in its return to the assessors."

The plaintiff in error in behalf of the nonresident stockholders defended the present action upon the ground that the statute under which the tax was sought to be collected was repugnant to the Constitution of the United States and in violation of Article IV, Section 2, Paragraph 1 of said Con-

stitution, and of the Fourteenth Amendment thereto. The issues upon the State's demurrer to the answer of the plaintiff in error were taken to the Supreme Court of Errors upon appeal from the judgment of the Superior Court sustaining the demurrer. The Supreme Court of Errors held that the statute in question was not repugnant to the United States Constitution, and was not in violation of Article IV, Section 2, Paragraph 1 of said Constitution or of the Fourteenth Amendment thereto, and by its judgment confirmed the judgment of the Superior Court.

ERRORS.

(1) The Supreme Court of Errors of the State of Connecticut erred in refusing to hold that Chapter CLIII of the Public Acts of 1897 of the State of Connecticut is in violation of Article IV, Section 2, Paragraph 1 of the United States Constitution, in that it requires citizens of other states than Connecticut to pay taxes upon shares of stock of The Travelers Insurance Company owned by them upon an assessed valuation equal to the market value of said shares, and Section 3836 of the General Statutes of Connecticut, under which such stock is assessed and taxed against residents of Connecticut, requires such residents to pay taxes upon an assessed valuation equal only to the market value of said stock, less a large deduction therefrom by reason of the real estate owned by the Company, and upon which it is assessed and pays taxes, and in that Chapter CLIII of the Public Acts of 1897 requires citizens of other states than Connecticut to pay taxes upon shares of the stock of The Travelers Insurance Company owned by them far in excess

of the taxes required to be paid by residents of Connecticut upon shares of the same stock owned by such residents.

(2) The Supreme Court of Errors of the State of Connecticut erred in refusing to hold that Chapter CLIII of the Public Acts of 1897 of said State is in violation of the Fourteenth Amendment to the United States Constitution, and denies to persons within its jurisdiction the equal protection of the laws in that it arbitrarily classifies and taxes the shares of nonresident stockholders of The Travelers Insurance Company and assesses such shares at a valuation far in excess of the valuation of shares of resident stockholders.

BRIEF.

I.

The judgment of the State Court involved the constitutionality, under the United States Constitution, of the statute under which the action was brought.

Section 3836 of the General Statutes of the State provides for listing and assessing, locally, the shares of stock of insurance companies owned by residents of the state. These shares are assessed at their market value less a deduction based on the value of the company's real estate upon which it is assessed and taxed. The deduction from the market value of a share is such proportion thereof as the total assessed value of the corporate real estate, wherever situate, bears to the surplus of the company.

In the case of Batterson *vs.* Hartford, 50 Conn., 558, 561, the court said: —

"The corporation had assets beyond debts to a certain amount. This surplus stands as its capital in the sense in which that word is used in the statute under consideration; presumably the maket value of its shares rests upon it; a portion of it is invested in real estate paying taxes in this state and other states. The legislature intended to relieve the shareholder from the assessment upon the value of his right, so far as any portion of that surplus of corporate property which was the foundation of the market value was invested in real estate and had paid a tax."

In the case of Batterson et al., Appeal from the Board of Relief, 72 Conn., 374, 376, the court said:—

"It is certain that 'capital' used in this connection, *i. e.*, as measuring a figurative ownership of the shareholder in the property of the corporation, must mean that part of the company's assets which would be divided among the shareholders in case of dissolution; that is to say, the assets representing the amount of the original capital and profits in excess of existing debts. This is the view taken in Batterson *vs.* Hartford, supra, p. 561. The amount, then, to be deducted must bear the same relation to the shareholder's assumed interest in the taxable value of the real estate, as the market value of his share bears to his assumed interest in the capital. In other words, as the whole capital of the corporation is to its capital taxed, so is the whole market value of the shareholder's stock to the amount to be deducted. For example: one ten-thousandth of the Travelers' capital is $336; the market value of the stock is $230; one ten-thousandth of the taxable value of the real estate is $90. We have, then, the proportion, 336 : 90 :: 230 : 62. The shareholder, under this theory of the statute, is equitably entitled to a deduction of $62, as made by the assessors."

In Barrett et al., Appeal from the Board of Relief, 73 Conn., 288, 291, the court said : —

> "Under these circumstances, it is too late to inquire whether the original statutes regulating returns to assessors of the market value of the shares in trust or insurance companies were intended to give the exemption of which the appellants now claim the benefit. That such was their intent was assumed in Batterson *vs.* Hartford, and conclusively affirmed by the legislature by incorporating them without substantial change, after they had thus received that construction, in the General Statutes."

See also

Dennis's Appeal from the Board of Relief, 72 Conn., 369.

State *vs.* Travelers Insurance Co., 70 Conn., 590.

The Travelers Insurance Company, on October 1, 1898, held a vast amount of real estate, and under said Section 3836 as construed in the cases above cited, the shareholders resident in Connecticut obtained, on account of such real estate holding, a large deduction from the market value of their shares in the assessment of such shares for taxation.

Chapter CLIII of the Public Acts of 1897 provides for assessment and taxation of shares of stock of insurance companies owned by stockholders not resident within the State of Connecticut. The returns made by officers of the corporations are corrected, and the assessment is made by the State Board of Equalization under the provisions of Section 39 0 of the General Statutes. Such shares are assessed at their market value without deduction, and taxed by a special

state tax at a fixed rate of one and one-half per cent of such value.

In the case of State *vs.* Travelers Insurance Co., 70 Conn., 590, 603, this same defendant urged that the deduction in question should be granted to nonresident shareholders, and the court said: —

> "The pith of the answer to the complaint is that the Board of Equalization ought to have allowed the deduction claimed from the market value of the shares on account of the defendant's holdings of taxable real estate. Such a deduction is provided for by General Statutes, Section 383 i, in favor of every resident shareholder. . . . . There is no statute which in terms required or authorized the Board to allow the deduction claimed."

The present action seeks to collect the tax levied under the last named statute upon shares of the stock of The Travelers Insurance Company owned by nonresidents on October 1, 1898. The assessment of these shares was at their market value, which was far in excess of the assessed value of the shares owned by residents on October 1, 1898, and the amount per share sought to be collected in this action is far in excess of the amount per share paid or required to be paid as a tax by the several resident shareholders upon the same stock owned by them on October 1, 1898.

The tax imposed by this statute is in form a tax against the corporation. The corporation has a lien at all times upon the shares to recover from the stockholder the tax so paid, and the stockholder is deemed to come under a contractual obligation to repay the money so advanced by the com-

pany. The tax is a tax upon the property of the stockholder and not the property of the company, and is in substance and reality a tax against the stockholder and not against the company.

In Batterson *vs.* Hartford, 50 Conn., 558, 560, the court said: —

> "The tax is not upon the property of the corporation; it is explicitly upon the shares."

In the case of State *vs.* Travelers Insurance Co., 70 Conn., 601, the court said:—

> "The tax in question is in form one against the corporation. State *vs.* Royce, 68 Conn., 311. In substance it is one against each of its nonresident stockholders to be paid by it in their behalf. . . . It is measured by the number of shares held by nonresidents and the value of each share. These shares do not belong to the corporation, and a tax on their value is virtually a tax against their owners."

And again: —

> "By becoming members of the defendant company after the passage of the act of 1897, or by remaining members subsequent to that event, every nonresident stockholder may fairly be deemed to have assented to any payment which it might be legally compelled to make in his behalf under the provisions of that law, and so to have come under a contractual obligation for the reimbursement of the moneys so advanced. For the full performance of that obligation, the defendant had a lien under General Statutes, Section 1923."

See also

Bank *vs.* Kentucky, 9 Wall., 353.

Tappan *vs.* Bank, 19 Wall., 490.

The only method of collecting the tax is by an action against the company, and the proper method of resistance is by defense to such action. The proper and possibly the only method by which the validity of the statute can be questioned in behalf of the nonresident stockholders is in defense to an action brought under the statute against the corporation, and the company's right to raise the question of the constitutionality of the statute in behalf of these stockholders has not been challenged.

In State *vs.* N. Y., N. H. & H. R. R. Co., 60 Conn., 326, 334, the court said: —

> "The statutes of this state now in question do not provide any means by which the tax therein imposed can be collected. Any unwilling corporation can contest the whole tax, as to its validity or amount, or any part of it, in a suit just as the defendant is doing in this suit. There is no way other than by a suit like the present one in which the collection of any tax imposed by these statutes can be compelled; and in such a suit any defendant may call into question the amount or the validity of the tax, as a whole or as to any part of it."

And in State *vs.* Royce, 68 Conn., 311, 315, the court said: —

> "An examination of the section named, as well as of the other sections of the chapter in which it is included, indicates that the legislature supposed the corporation itself would be the defendant against which any action for an unpaid tax, authorized by that statute, would be brought. The corporation is the real tax debtor."

See also

Oliver *vs.* Washington Mills, 11 Allen, 268.

The special facts presented to the State Court in this particular action are recited in the complaint (see Record, page 4), and in the substituted answer (see Record, pages 10 and 11). The allegations of the substituted answer are admitted by the State's demurrer to that answer.

The only reasons assigned in the demurrer which did not involve the constitutionality of the statute are the fourth, fifth, and ninth reasons.

The fourth and fifth reasons were as follows (see Record p. 13):

> "Fourth: — It is immaterial at what amount the defendant's investments in real estate were on the 1st day of October, 1898, carried on its books."
>
> "Fifth: — It does not appear but that on the 1st day of October, 1898, the defendant company had assets vastly in excess of its capital and surplus, and it does not appear that any part of its capital was then invested in real estate."

The demurrer admits that the company owned real estate of a value exceeding eighteen hundred thousand dollars upon which it was assessed and taxed, and that all of the resident owners of its stock were assessed at a valuation equal to the market value of the stock less a large deduction therefrom by reason of the company's investments in real estate, and that the amount per share sought to be collected from the defendant in this action as a tax upon the stock owned by non-resident stockholders is far in excess of the amount per share paid and required to be paid as a tax by the several resident stockholders upon the stock owned by them on October 1, 1898. (See Record, page 11.)

The material fact is that the resident stockholders secured a substantial deduction in the assessment of their stock because of the corporate holdings of real estate which bore a direct tax burden. The exact amount of the company's capital, the exact amount of its surplus, the exact amount of the assessed value of its real estate, and the exact amount of the deduction by which the resident stockholders were favored are not significant, and the fourth and fifth reasons of demurrer were properly ignored in the opinion of the state court.

The ninth reason of demurrer was as follows: —

Ninth: — The laws of this State do not provide for any deduction from the market value of the stock of the defendant company owned by resident shareholders, in assessing said stock for taxation, by reason of the investments of said company in real estate.

This ground of demurrer was not sustained. On the contrary, the court affirmed its previous rulings in Batterson *vs.* Hartford, 50 Conn., 558, and Dennis's Appeal, 72 Conn., 369, and Batterson's Appeal, 72 Conn., 374.

Referring to Section 3836, the court says (see Record, p. 35):

> "We have held that the provision thus construed is not a direction to the assessors to make an arbitrary deduction from the amount of the shareholders' lists, but is a direction to make a different valuation so that the statute in respect to corporations owning taxable real estate no longer treats the shareholder as owner of a piece of property distinct from that of the corporation, but treats him as owning an interest in a

proportional part of the capital of the corporation, *i. e.*, of the assets representing the amount of the original capital and profits in excess of existing debts, and therefore in the valuation of this property for municipal taxation a deduction shall be made of the capital invested in land already taxed in this state and elsewhere, and the sum to be deducted must bear the same relation to the shareholder's interest in the taxable value of the real estate as the market value of his share bears to his interest in the actual value of the assets in excess of the existing debts."

With this exception all the issues in the case considered by the state Supreme Court relate to the validity under the United States Constitution of the statute under which the case was brought, and the judgment of the court sustained that statute, and held that it was not in violation of Article IV, Section 2, Paragraph 1, of the United States Constitution or of the Fourteenth Amendment thereto.

II.

The statute law under which the tax is imposed upon the shares of nonresident stockholders is in violation of the 2d Section of Article IV of the United States Constitution, in that it withholds from the valuation of shares belonging to citizens of other states the deduction allowed by the statutes in the valuation of shares of the same stock belonging to citizens of Connecticut, thereby depriving citizens of other states of privileges and immunities enjoyed by citizens of Connecticut.

"The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."

Article IV, Section 2, Par. 1.

(a) The deduction allowed in the assessment of shares of residents is clearly a privilege and immunity within the meaning of this Article.

Such exemption is referred to as an immunity in the early and leading case of Corfield vs. Coryell, 4 Wash., C. C. 371.

In the case of Campbell *vs.* Morris, 3 Har. & M. (Md.), 554, the court said: "Privilege and immunity are synonymous or nearly so. Privilege signifies a peculiar advantage, exemption, immunity; immunity signifies exemption, privilege." After tracing the use of the same words in the Articles of Confederation, the following exposition was given:

> "The court are of opinion it means that the citizens of all the States shall have the peculiar advantage of acquiring and holding real as well as personal property, and that such property shall be protected and secured by the laws of the State in the same manner as the property of the citizens of the State is protected. It means that such property shall not be liable to any taxes or burdens which the property of the citizens is not subject to. It may also mean that as creditors they shall be on the same footing with the State creditor, in the payment of the debts of a deceased debtor. It secures and protects personal rights."

In Paul *vs.* Virginia, 8 Wall, 168, 180, the court said:

> "It was undoubtedly the object of the clause in question to place the citizens of each State 'upon the same footing with citizens of other states so far as the advantages resulting from citizenship in those states are concerned. It relieves

> them from the disabilities of alienage in other states; it inhibits discriminating legislation against them by other states; . . . it insures to them in other states the same freedom possessed by the citizens of those states in the acquisition and enjoyment of property and in the pursuit of happiness; and it secures to them in other states the equal protection of their laws. It has justly been said that no provision in the Constitution has tended so strongly to constitute the citizens of the United States one people as this."

The clause, as is said in Ward *vs.* Maryland, 12 Wall., 418, 430,

> "protects the rights of a citizen of one state . . . to acquire personal property, . . . and to be exempt from any higher taxes or excises than are imposed by the state upon its own citizens."

And, after showing that the framers of the Constitution intended to remove the inequalities of burden in commercial regulations resulting under the Confederation by forbidding such discriminations, the court adds at page 431:

> "Important as these provisions have been supposed to be, still it is clear that they would become comparatively valueless if it should be held that each state possesses the power in levying taxes for the support of its own government to discriminate against the citizens of every other state of the Union."

In Oliver *vs.* Washington Mills, 11 Allen (Mass.), 268, 281, the Court, after stating that Article IV, Section 2, of the Constitution was doubtless condensed from Article IV, Section 1, of the Articles of Confederation, says:

> "The object of substituting the Constitution for the Articles of Confederation was to make a more

> perfect Union. One of the most efficient methods of effecting this purpose was to vest in the general government the power to regulate not only foreign trade and commerce, but also that between the different states of the Union, and to secure an equality of rights, privileges and immunities in each state for the citizens of all the states. It is obvious that the power of a state to impose different and greater burdens or impositions on the property of citizens of other states than on the same property belonging to its own subjects would directly conflict with this constitutional provision. By exempting its own citizens from a tax or excise to which citizens of other states were subject, the former would enjoy an immunity of which the latter would be deprived."

In Sprague *vs.* Fletcher, 69 Vt., 69, it was held that a statute which allowed a deduction from the appraised value of the personal estate of a resident of an amount equal to the excess of his debts over the aggregate amount of his nontaxable bonds, stocks, and deposits, but which gave a nonresident's property circumstanced the same no deduction, "provides an immunity from taxation to a resident that it denies to a nonresident, discriminates in favor of a resident and against a nonresident, and denies to citizens of other states an immunity given to our own citizens. Such discrimination and denial are clearly forbidden by the Constitution of the United States, which provides that the citizens of each state shall be entitled to all privileges and immunities of citizens of the several states."

The Court goes on to say at page 75:

> "When a nonresident observes laws that are enacted with a view to regulate the conduct and action of our citizens, it is his right and privilege to have his

property, situate in this state, protected under our laws as effectually as the property of a resident; and if his property is subject to taxation, burdens and diminutions that a resident's property, circumstanced the same, is exempt from, his property is not thus protected, and he is denied an immunity under our law that is given to our own citizens, . . . and he is entitled to a mode of classification and of determination as to what sum his property shall be placed in the list at, for the purpose of taxation, that does not subject him to taxation, when he would be exempt therefrom if he were a resident of this state owning like property. . . . A mode of making up the grand list of a nonresident, or a system of classifying, that results in placing his property in the grand list when a resident's property under like circumstances, is not, or is placed at a lower valuation by reason of a deduction from its appraised value that is not allowed to a nonresident, subjects the nonresident to a greater rate of taxation, and to the payment of taxes that are not exacted of a resident. . . . The legislature may have power to provide a method for making up the grand list of a nonresident that differs from the method of making up the list of a resident, and to classify property for the purposes of taxation, if the purpose of the different method and classification is to secure uniformity of taxation and they have a tendency to secure it; but it has not the power to deny to a nonresident a deduction which is allowed a resident, that has the effect to place his property in the list for taxation and exempt like property of a resident, circumstanced the same, except that it is owned by a resident."

In Bliss's Petition, 63 N. H. 135, the court held that a state cannot refuse a peddler's license to a citizen of another

state upon the same terms that it grants licenses to its own citizens, and said: —

> "The state's power of taxation cannot discriminate against the citizens of other states. The equality of privileges and immunities guaranteed by the Federal Constitution, Art. 4, par. 2, to the citizens of each state exempts them from any higher taxes than the state imposes upon her own citizens."

In Wiley *vs.* Parmer, 14 Ala., 627, the statute of a state in taxing the slaves of nonresidents in double the amount at which those of a resident were taxed was held unconstitutional.

In Farmington *vs.* Downing, 67 N. H., 441, 442, in regard to a tax on bank stock owned by a Massachusetts citizen the court said:

> "The taxable value of the shares is not determined by the residence of the owner. If the stock was not taxable to Downing as a citizen of New Hampshire, it was not taxable to him as a citizen of Massachusetts. The imposition of a higher tax upon him as a citizen in Massachusetts than he would be obliged to pay as a citizen of this state would be in conflict with the provision of the Federal Constitution, that the citizens of each state shall be entitled to the privileges and immunities of citizens of the several states."

The constitutions of the New England states, generally, contain no provisions in regard to taxation whatever, except in so far as they enumerate the protection of person and property in their Bills of Right. They contain no specific provisions in regard to taxation as do the constitutions of certain western and southern states.

Judge Cooley in his "Constitutional Limitations," 6th edition, page 489, says: —

> "One very plain and unquestionable immunity is exemption from any tax, burden, or imposition under state laws, as a condition to the enjoyment to any right or privilege under the laws of the United States."

In the case of Blake *vs.* McClung, 172 U. S., 239, a statute of Tennessee, which gave to residents of that state a priority over nonresidents in the distribution of the assets of a foreign corporation, which by filing its charter or articles of association in the state is deemed a corporation of that state, is held so far as it discriminates against citizens of other states to be in violation of the United States Constitution, Article 4, giving equal privileges and immunities to the citizens of the several states. The general view of the court is that, as the statute by its necessary operation excluded citizens of other states from transacting business with such a corporation upon terms of equality with citizens of Tennessee, it was unconstitutional and void, and the state had no right to attempt to give a priority to the claims of its citizens as individual creditors over the claims of individual creditors, citizens of other states, and that no different principle could apply as between individual citizens of the several states when the assets to be distributed were the assets of an insolvent private corporation having the power to contract with citizens residing in states other than the one in which it was located. The opinion contains a learned and exhaustive review of the cases arising under Article 4, Section 2, of the United States Constitution.

The case of Blake *vs.* McClung was substantially followed

.n the Michigan case of Maynard *vs.* Granite State Provident Association, 92 Fed. Rep., 435.

In the case of The State *vs.* Travelers Ins. Co., 70 Conn., 604, the Court in the opinion written by Judge Baldwin described the deduction in question as " this privilege or rebate to our own citizens," and found no offense to Article IV of the United States Constitution because upon the facts in that case it did not affirmatively appear that the non-residents were other than aliens.

(b) The discrimination against residents without the state of Connecticut is a discrimination against citizens of other states. The stockholders in whose behalf The Travelers Insurance Company is defending the present action are all citizens of other states than Connecticut. (See Record, page 10.)

The place of residence within the meaning of the tax statutes of the state is the place of domicile, the place where the tax payer has his permanent home.

Hartford *vs.* Champion, 58 Conn., 268.

The phrase employed in the statute, " stockholders residing without the State," embraces all such stockholders as are citizens of other states.

In Blake *vs.* McClung, cited above, it was urged that, as the statute whose validity was questioned in that action referred only to residents, there was no occasion to consider whether it was repugnant to the provisions of the National Constitution relating to citizens. And the Court said, at page 247 : —

> " The manifest purpose was to give to all Tennessee creditors priority over all creditors residing out of

> that state whether the latter were citizens or residents of such other state or country."

And the Court held that the statute was in violation of Article IV as abridging the privileges and immunities of citizens of other states than Tennessee.

In Maynard *vs.* Granite State Provident Association, cited above, the Court held that a statute giving the shareholders of a corporation resident in Michigan preference over shareholders resident without that state was in violation of the Article as discriminating against citizens of other states who were shareholders. Quoting from the opinion of Judge Taft, at page 440:

> "It appears quite as clearly from the records in this case that the nonresident shareholders of Tennessee are citizens of other states in the Union as it did in the Blake case that the individual plaintiffs in error were citizens of Ohio. The expression 'stockholders and creditors in this state' contained in the Michigan statute must be given the same construction as the words 'creditors resident of the State of Tennessee' in the Tennessee statute were given by the Supreme Court and for the same reasons."

(c) The privilege granted to citizens of Connecticut and withheld from citizens of other states in the valuation of their respective shares bears no relation to the geographical classification of the stockholders.

The argument of the State Court rests upon the contrary assumption.

> "It follows that in taxing one class of corporations, the law divides the members of the corporation into two classes, one consisting of shareholders whose

> property rights can be listed for municipal taxation in the towns of their residence, and the other of those whose property rights cannot be so listed; . . . that the portion represented by municipal shareholders is taxed under rules governing rate and sums to which the rate applies, including valuations, determined by the necessity of municipal taxation, and that the portion represented by the state shareholders is taxed under different rules determined by the necessities of special taxation. (See Record, page 28.)

The State for purposes of taxation treats the situs of the corporation as the situs of the shares belonging to residents of other states, to wit, the town of Hartford; but instead of assessing and taxing these shares as it assesses and taxes the shares owned by residents of the town of Hartford it assesses them at a different and much higher valuation, and taxes them at an arbitrary rate. The rate is not now the object of the complaint. As urged in the court's opinion at page 37 of the record, the average rate of the 168 towns of the state may be about one and one-half per centum, the rate of the non-resident tax. In claiming a violation of Article IV of the Constitution the plaintiff in error questions neither the method of taxing the shares by a direct state tax, although this method is arbitrary and not necessitated by the character or the situs of the property: nor the rate of the tax, although the rate is arbitrary and differs from the rate of the tax upon precisely the same property owned by citizens of Connecticut, and, in the view of the State, situated in the same town; but does complain of the discrimination by the State in withholding from citizens of other states a substantial exemption granted to citizens of Connecticut. The withholding of this exemption is not a natural incident to the

mode of taxation. The State says that the taxing of shares at their full value and the concurrent taxing of the property of the corporation is in substance a double tax. The State thereupon relieves a citizen of Connecticut of this double burden, and places it upon a citizen of Massachusetts, and the state court justifies the act as an incident to a classification. The Court's argument we submit is completely answered by the fact that the proviso granting the deduction could as readily have been written into Chapter CLIII of the Act of 1897 as it was written into Section 3836 of the General Statutes. The state court has we think lost sight of the discrimination which offends Article IV of the Constitution in analyzing the peculiarities of the tax system and tax history of the State. There is no ambiguity in the issue intended to be raised by the plaintiff in error. The officials of the State on the one hand and the officials of the towns and municipalities on the other have in pursuance of law placed different values upon shares of stock of the same company, because certain of those shares are owned by residents and certain of them by nonresidents. Here are two specific things more nearly alike than any two articles of corporeal property, and yet the law attempts to say that one of these things shall be listed for taxation at a higher value than the other, because one is owned by a nonresident and one by a resident. It is the principle of determining values that is objected to, the giving of different values for the single purpose of taxation to property of the same class and kind solely because of the different ownership of that property.

In the case of People *vs.* Weaver, 100 U. S., 539, the court analyzes the process of tax assessment and discusses a discrimination closely analogous to the discrimination here com-

plained of. The case considers the provision of the federal statute permitting the taxation of the shares of national banks at a rate not greater than that assessed upon other money capital, and the offense arose not because of a different rate but because of a difference in valuation resulting from a deduction withheld in the assessment of national bank shares and allowed in the assessment of other property.

(d) Property rights in shares of a state corporation are not excepted from the constitutional protection to citizens of other states.

The argument of the state court would require submission by citizens of other states to whatever unequal burdens the State may hereafter prescribe upon their enjoyment of property in the shares of Connecticut corporations. We quote from the opinion at page 31:

> "The discriminations are between members of our state corporations by reason of their participation in its grant of corporate franchise. In accepting the rights of property inherent in that grant they voluntarily put themselves for purposes of taxation under our jurisdiction. The State discriminates in the manner of compelling members of a corporation to share the gross amount which the corporation should contribute under all forms of taxation by reason of the property created and accumulated and privileges enjoyed through the State's grant of incorporation. The obligation of the members to submit to such discrimination is an incident to their acceptance and enjoyment of the grant."

Even if the State may restrict the membership of its chartered corporations as urged in the court's opinion in

State *vs.* Travelers Insurance Co., 70 Conn., 590, it has never undertaken so to do. A citizen of New York may hold as valid a title to stock in the Travelers Insurance Company as to a lot of land in the town of Hartford, and, as the owner of either, he is entitled to the same privileges and immunities as is a citizen of Connecticut.

The power of a state to tax the corporate franchise of the corporation or its corporate privilege of doing business may be exercised arbitrarily and even capriciously. But the individual's right of ownership in a share of stock of a corporation is not a corporate privilege or a corporate franchise. It is incident to the personal right of property, and the state's power cannot be exerted to defeat or impair such right in violation of constitutional limitation.

In the case of Maynard *vs.* Granite State Provident Association, *supra*, the enforcement of a statutory restriction upon the rights of nonresident stockholders to share in the assets of the corporation was attempted, and the court said, at page 440:

> "Any one in any state had the right to become a stockholder or shareholder in the defendant corporation. There was no restriction attempted by the law of Michigan or the law of any other state upon the residence of stockholders. The equity of stockholders to share in the assets of the corporation when it is being wound up is junior to that of creditors, but it is none the less to be protected as a privilege and immunity under the Constitution of the United States."

And the court held that the priority given by the statute to resident shareholders was invalid as in violation of Article IV, in denying to citizens of other states the privileges of citizens in the state of Michigan.

In the case of *Blake vs. McClung, supra*, the court said, at page 254:

> "We hold such discrimination against citizens of other states to be repugnant to the second section of the Fourth Article of the Constitution of the United States, although generally speaking the state has the power to prescribe the conditions upon which foreign corporations may enter its territory for purposes of business. Such a power cannot be exerted with the effect of defeating or impairing rights secured to citizens of the several states by the supreme law of the land. Indeed, all the powers possessed by a state must be exercised consistently with the privileges and immunities granted or protected by the Constitution of the United States."

III

Chapter CLIII of the Public Acts of 1897 of the State of Connecticut is in violation of the Fourteenth Amendment to the Constitution of the United States, and denies to persons within its jurisdiction the equal protection of the laws, in that it arbitrarily classifies and taxes the shares of nonresident stockholders and assesses such shares at a valuation far in excess of the valuation of shares of resident stockholders.

(a) The stockholders whose shares are taxed under the statute are within the jurisdiction of the State. The tax is upon their property, which the State for its own purposes sees fit to treat as situated within its borders. The rights of the stockholders in that property are subjected to the control and entitled to the protection of its laws.

(b) It is unnecessary to argue that the provision of the Fourteenth Amendment forbidding any state to deny to any

person within its jurisdiction the equal protection of the laws is applicable to arbitrary and unequal tax exactions. The limitations of the Amendment upon the taxing power of the state sovereignties has been the subject of repeated consideration by this court.

See Slaughter House Cases, 16 Wall., 36.

In Philadelphia Fire Association of Philadelphia *vs.* New York, 119 U. S., 110, 120, Mr. Justice Harlan said: —

> "The denial of the equal protection of the law may occur in various ways. It will most often occur in the enforcement of laws imposing taxes. An individual is denied the equal protection of the laws if his property is subjected by the State to higher taxation than is imposed upon like property of other individuals in the same community."

In Neal *vs.* Delaware, 103 U. S., 370, 408, Mr. Justice Field said: —

> "Equal protection of the laws of a State is extended to persons within its jurisdiction, within the meaning of the amendment, . . . when they are subjected to no restrictions in the acquisition of property, the enjoyment of personal liberty, and the pursuit of happiness, which do not equally affect others; when they are liable to no other nor greater burdens or charges than such as are laid upon others, and when no different nor greater punishment is enforced against them for a violation of the laws. When this condition of things exists in a State, there is that equality before the law which is guaranteed to all persons within its jurisdiction."

In Hagar *vs.* Reclamation Dist., 111 U. S., 701, the Court said in regard to the Fourteenth Amendment:—

> "(It) is intended as additional security against the arbitrary deprivation of life and liberty, and the arbitrary spoliation of property."

In County of San Mateo *vs.* Southern Pacific R. Co. (The Railroad tax cases), 13 Fed. Rep., 722, 733, the Court said: —

> "The Fourteenth Amendment to the Constitution, in declaring that no state shall deny to any person within its jurisdiction the equal protection of the laws, imposes a limitation upon the exercise of all the powers of the State which can touch the individual or his property, including among them that of taxation . . . Unequal exactions in every form, or under any pretense, are absolutely forbidden; and of course unequal taxation, for it is that form that oppressive burdens are usually laid. It is not possible to conceive of equal protection under any system of laws where arbitrary and unequal taxation is permissible; where different persons may be taxed on their property of the same kind, similarly situated, at different rates; where for instance one may be taxed at one per cent. on the value of his property, another at two or five per cent., or where one may be thus taxed according to his color, because he is white, or black, or brown, or yellow, or according to any other rule than that of a fixed rate proportionate to the value of his property."

The affirmation of this case is found in Santa Clara County *vs.* Southern Pacific R. Co., 118 U. S., 394.

(c) The Supreme Court of the State has undertaken to justify the inequalities of the special tax in question by urging the protections of classification.

Quoting from the court's opinion at page 28 of the Record:

> "It follows that in taxing one class of corporations, the law divides the members of the corporation into two classes, one consisting of shareholders whose property rights can be listed for municipal taxation in the towns of their residence, and the other of those whose property rights cannot be so listed."

We submit that this classification is arbitrary, and the special state tax is unwarranted.

The rule within which tax differences through classification may exist without offense to the Fourteenth Amendment has been defined by this court in a series of cases, prominent among which is the case of Magoun *vs.* Illinois Trust & Savings Bank *et al.*, 170 U. S., 283. The thorough analysis contained in the court's opinion in this case of the previous decisions renders their citation superfluous.

The rule requires that all persons subjected to such legislation shall be treated alike under like circumstances and conditions both in the privileges conferred and the liabilities imposed.

> Hayes *vs.* Missouri, 120 U. S., 68.
> Magoun *vs.* Illinois Trust & Savings Bank *et al.*, *supra.*

It requires the same means and methods to be applied impartially so that the law shall operate equally and uniformly upon all persons in similar circumstances.

> Kentucky Railroad Tax Cases, 115 U. S., 321.

The right of a state to distinguish, select and classify objects of legislation is not without limitations.

> Magoun *vs.* Illinois Trust & Savings Bank, *supra.*
> Bell's Gap R. Co. *vs.* Pennsylvania, 134 U. S., 232.

In Gulf, Colorado & Santa Fé Railway *vs.* Ellis, 165 U. S., 150, 165, Mr. Justice Brewer said: —

> "It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and that in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground — some difference which bears a just and proper relation to the attempted classification — and is not a mere arbitrary selection."

If this test, which is endorsed in the court's opinion in Magoun *vs.* Illinois Trust & Savings Bank, is applied to the case under consideration, the arbitrary character of the legislation in question is exposed.

The State's power to fix the situs of the shares of nonresident stockholders at the home of the corporation is not here challenged. That situs which the State claims for the purpose of subjecting these shares to a tax is the town of Hartford. The power of the State to impose a tax upon those shares so situated in a mode different from the mode of taxing other shares of the same corporation having the same situs is disputed. To warrant the imposition of the tax the State must necessarily fix the situs of the shares in the town of Hartford. It may then impose upon them the same tax burdens imposed upon similar property similarly located. To select certain of the shares of The Travelers Insurance Company situated in the town of Hartford and subject them to a special tax withholds the equal protection of the laws.

The fact that the shares so selected for special taxation are owned by nonresidents does not change their nature or their situs, and the difference in ownership does not bear any

just or proper relation to the attempted classification. The unreasonableness of the classification is apparent because the residence of the owner in no way governs the situs of the property taxed. The shares of the resident of New York and the shares of the resident of Hartford would with equal propriety be subjected to local taxation at their common situs, viz., the town of Hartford; or if the State saw fit could, together with the shares of all other stockholders of similar companies, be subjected to a special state tax.

(d) It is to be borne in mind that the tax in question is a tax upon property and not a tax upon the right of inheritance or other creation of the taxing power.

The state court seeks a further justification of the special tax in the character of the property taxed. It treats the right of property in a share of stock as a privilege specially granted by the State.

> "It is not, however, true, in the sense suggested, that ownership of a share of stock is practically of the same nature as ownership of tangible property; the latter rests upon a right universally recognized from earliest times which is common to all, and secured in its enjoyment by constitutional guarantees; while the former is of comparatively modern origin, dependent for its existence upon a legislative grant of special privileges to a few, subject in this and in most cases to alteration and repeal. . . . . but this does not alter the fact that in prescribing the mode of taxation in question, the State is exercising its power of limiting the conditions on which the grant of corporate franchise may be enjoyed." (See Record, page 34.)

And again: —

> "It is held that where the constitution forbids unequal taxation the State may nevertheless discrim-

> inate in the taxation of those rights of property growing out of an exercise of its power to regulate the law of succession and wills; *a fortiori*, the State may prescribe the terms on which rights of property growing out of its grant of special corporate privileges may be enjoyed." (See Record, p. 32.)

In supporting the inequalities of the tax in question, the state court relies upon an analogy between a tax upon the property rights in a share of stock and a tax upon the rights of succession and inheritance which called for this court's consideration of the scope of the Fourteenth Amendment in the case of Magoun *vs.* Illinois Trust & Savings Bank, *supra*. We submit that the analogy is forced. The shareholder has no title, legal or equitable, in the corporate franchise. His property in the law's eye is distinct from the corporate property. His rights in a share of stock are as much the object of constitutional protection as his rights in his homestead. The logic of the state court clothes the State with a power to destroy the specific shares of any stockholder, not merely by indirection through a repeal of the corporate franchises, but directly by confiscation.

In defining the privileges guarded by the constitution this court in the early and leading case of Corfield *vs.* Coryell, 4 Wash. C. C., 371, makes such privileges include "the right to take, hold, and possess property of every kind." Are shares of corporate stock to be excluded from this classification? Such exclusion would withdraw the fundamental protections from a class of property whose importance in amount and in diversity of ownership is perhaps exceeded by no other, and would expose its owners to arbitrary legislative reprisal.

Blake *vs.* McClung, *supra.*
Maynard *vs.* Granite State Provident Association, *supra.*

(e) Even if the classification, unnecessarily created by the State for the purpose of subjecting nonresident shareholders to a special state tax in lieu of the local tax imposed upon similar property, is not repugnant to the Fourteenth Amendment, the clear discrimination in the assessment of these shares bears no just or proper relation to such classification, and denies to the persons subjected to its burden the equal protection of the laws.

The discrimination resulting from the assessment of shares of certain stockholders at their market value and the assessment of shares of other stockholders at a valuation calculated by a large subtraction from such market value is conceded in the present case. This difference in the mode of valuation bears no just or proper relation to the classification. In fact it bears to such classification no relation whatever. The granting and withholding of the deduction is essentially arbitrary. The residence of its beneficiaries presents no excuse for its bestowal, and the residence of those from whom it is withheld suggests no warrant for its denial. The only excuse for its existence suggested by the court (See Record, page 37), is in the possible accident that between the arbitrary rate of the state tax and the exemption allowed to resident stockholders an equality of burden might sometimes happen. The lameness of this excuse and the absence of any such legislative intent are made apparent by the court's opinion at page 36 of the record, where it says: "Only a small number of corporations within the scope of the act own taxable real estate to any appreciable amount."

In the present case the difference in the modes of valuation has resulted in gross inequality in the tax burden, and the violation of the protections of the Fourteenth Amendment is clearly demonstrated.

(f) The amount of discrimination is not however to be confounded with the important principal involved.

As said in Gulf, Colorado & Santa Fé Railway *vs.* Ellis, *supra*, at page 153:

> "The matter of amount does not determine the question of right, and the party who has a legal right may insist upon it, if only a shilling be involved."

And, quoting Mr. Justice Bradley, in Boyd *vs.* United Staes, 116 U. S., 616, 635:—

> "Illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. . . . It is the duty of courts to be watchful for the constitutional rights of the citizens and against any stealthy encroachments thereon. Their motto should be *obsta principiis*."

If the state may discriminate by withholding from one class a tax exemption granted to another class, both composed of the owners of similar property, it may with no greater offense in principle require for one class an assessment of its property at values double or tenfold the values required for another class. The principle involved is the right of the state by tax discrimination to destroy the property of a class whose distinction, to wit, residence without the state, is the sole ground of such discrimination.

Mr. Justice Brewer, in the case of Magoun *vs.* Illinois Trust & Savings Bank, *supra*, said:

> "Equality in right, in protection and in burden is the thought which has run through the life of this Nation and its constitutional enactments from the Declaration of Independence to the present hour. . . . But when a tax law directly, necessarily and intentionally creates an inequality of burden, it then becomes imperative to inquire whether this inequality thus intentionally created can find any constitutional justification."

The statute in question is arbitrary in principle, selecting for a special state tax property precisely similar in character and situs to other property not so taxed, and is discriminating and unequal in providing a measure of valuation differing from the measure for other property of the same character and location and resulting in a far greater tax burden upon persons subjected to its stress than the tax borne by other owners of property of precisely the same character.

In sustaining the constitutionality of the act the Supreme Court of the state is driven by the logic of its own reasoning to sustain the following propositions, which we submit are untenable:

That a classification based upon residence justifies the imposition upon property of a special tax different from the tax imposed upon similar property similarly situated.

That a discrimination made within such classification but without relation thereto and in itself offensive to constitutional limitations escapes those limitations under cover of the classification.

That when nonresidents buy or inherit stock of a Connecticut corporation they voluntarily submit their property rights therein to such burdens as the State may see fit to arbitrarily and capriciously impose.

That because citizens of other states fall within the classification of nonresidents they involuntarily surrender the privileges and immunities granted to citizens of Connecticut.

We submit that the state court erred, and that the statute in question is in violation both of Article IV of the United States Constitution and of the Fourteenth Amendment thereto.

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